

# Agency Survey Results

*Current Agency Practices Concerning Commercial  
Access to Government Electronic Records*

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Conducted by the  
Governor's Work Group on

**Commercial Access  
To Government . . . . .  
Electronic Records**

November 1996



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To obtain a copy of this document, Agency Survey Results, or the report it accompanies – the Final Report of the Governor’s Work Group on Commercial Access to Government Electronic Records, please contact the Department of Information Services at 360/407-4DIS (4347), by FAX at 360/438-7996, or via the Internet at [contact@dis.wa.gov](mailto:contact@dis.wa.gov).

The Survey Results, the Final Report and other documents associated with the Governor’s Work Group on Commercial Access to Government Electronic Records are also available on the World Wide Web at <http://www.wa.gov/dis/commaccess>.



# Current Practices Agency Survey

## A Synopsis of Findings

### 1. Introduction

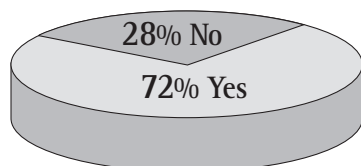
The Governor’s Work Group on Commercial Access to Government Electronic Records surveyed 51 state agencies for information about current practices and issues relating to the release of electronic public records for commercial use. Forty-one agencies responded (an 80 percent response rate). A summary of the survey results follows.

The Work Group appreciates the efforts of agencies in responding to the survey in a full and comprehensive manner. This document is intended to report on what agencies told the Work Group without editorial comment. The views expressed herein are those of the reporting agency. Readers interested in the Work Group’s larger set of findings, which incorporate the survey results, should obtain a copy of its final report, *In the Balance*, through the means described on the inside cover of this document.

### 2. State Laws Governing Release of Personal and Other Information for Commercial Purposes

The survey reflects the variety of laws, policies and practices that apply to the release of records for commercial purposes. Washington State’s public records law requires agencies to release information unless it is specifically exempted from the definition of public record in statute.

Seventy-two percent of the agencies surveyed had such an exemption for at least one of

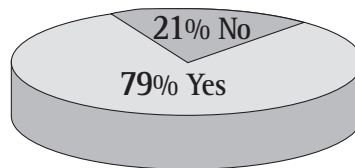


their records in statute, or resulting from established case law.

The Open Records Act does not distinguish between commercial requests and other public information requests, except in one respect. RCW 42.17.260(9) prohibits agencies from releasing “lists of individuals requested for commercial purposes” unless they are specifically authorized to do so.

A host of other exemptions single out specific records or types of information, but leave agencies without a clear set of guidelines to ensure that consistent principles are evident. Agencies that receive federal funding also often have federal information and client confidentiality policies to follow.

Seventy-nine percent of the agencies surveyed reported that they collect, generate, or serve as a steward for confidential proprietary information. When asked whether the law needed to be



amended, several agencies recommended provisions to strengthen privacy protections for businesses and individuals or to make state law and practices more consistent. *[see Appendix A, Amendments to Current Law Proposed by Agencies]*

Twelve percent of the agencies reported that they had specific statutory authority to release lists of personal information for commercial use.<sup>1</sup>

#### Comments:

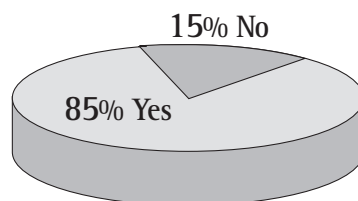
- “More specificity is needed to clearly define agency rights and obligations under 42.17 RCW with respect to [other state privacy statutes].”
- “[This agency recommends] minor changes necessary to implement [the] federal Drivers’ Privacy Protection Act of 1994.”

<sup>1</sup> Department of Licensing: RCW 46.12.370, 46.52.130, 42.17.260, Chapter 19.02 RCW; Office of the Administrator of the Courts: Supreme Court Rule (JISC); Department of Social and Health Services: RCW 74.04.060, 26.23.120(5), 45 CFR 303.105, RCW 42.17.260(a), 74.46.820, 74.09.120; Department of General Administration: none given.

- “There needs to be statutory coordination between [RCW] 42.17.310 and the Uniform Trade Secrets Act (19.108 RCW). Companies are required to submit information they believe is proprietary yet our office is unable to provide nondisclosure assurances.”
- “We do not have particular areas we are proposing to be exempted [from release as a public record]. We question, however, the current imbalance between the ease of access to data and privacy. There is insufficient protection of the privacy of persons who report data to us.”
- “[...]Companies have become less willing to share sensitive business information with [our] staff due to concerns that, ultimately, we cannot protect it from release to their competitors.”
- “Current exemptions do not provide adequate protection for intellectual property and should be broadened.”

### 3. Commercial-Use Requests - Type and Volume of Records

Of the agencies surveyed, 85 percent have received requests for data and/or electronic information systems for commercial use.<sup>2</sup> The agencies reported a wide variety of records requested



by insurance companies, consultants, professional organizations, labor unions, hospitals, software-developing companies, service providers, demographic compilers, financial institutions, not-for-profit organizations, and others.

The survey data do not allow for a reliable estimate of the number of commercially valuable databases and systems in state government. Eight agencies listed 61 specific records and systems, and several other agencies indicated that they also received commercial requests for information.

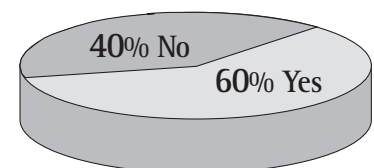
The requested records include the following:

- Lists of licensed individuals and/or businesses from regulatory agencies
- Criminal history records
- Birth and death records
- Geographic information systems
- Winning lottery numbers
- Motor-vehicle registration and driving records
- Hospital patient data
- State employees' addresses and home telephone numbers

The intended commercial use of this information ranged from solicitation to background checks on individuals to internal administrative use.

### 4. Impacts on Agency Resources

Of the agencies surveyed, 60 percent have experienced difficulty in responding to requests for electronically stored information. The most



commonly cited difficulties are the impacts on an agency's staff and technical resources to respond to certain types of request.

<sup>2</sup> Sixty-eight percent have received requests for litigation purposes.

Under state public-records law as interpreted by the Attorney General, agencies can deny requests that would require new electronic formatting or programming, since public records are understood to be existing documents. At least one of the surveyed agencies mentioned this option as one that is routinely used to deny potentially burdensome requests. However, a number of the surveyed agencies reported requests for data in an existing format, but spanning incompatible paper and/or electronic systems. Several agencies mentioned that such requests were time-consuming for staff.

Another point that arises in the survey is that most information systems were not built for flexibility and ease in responding to information requests for commercial use. Several agencies mentioned that they have difficulty redacting, or removing, personally identifiable information from databases that are requested for commercial use.

#### 4.1. Staff Resources

Many agencies indicated that one of the principal difficulties in responding to requests for information is the staff time necessary to respond to the request. For time-consuming requests involving large amounts of data or different systems, staff typically have to be reassigned from normal duties.

##### Comments:

- *“At times we receive requests for information from individuals wanting to know the extent of information the department has concerning them. This presents a difficulty in that electronic records are held on different systems for driver, vehicle, professions, master licensing and uniform commercial code. All these systems must be accessed separately. Often times requests are made for which we do not have the programming in place to fulfill the demand.”*

- *“The difficulty is in the increased workload and the consequent juggling of assignments which support the mission of the agency. Significant staff time is needed to respond to information requests for old laboratory data. Whether the data is archived on paper or electronically, staff must locate and retrieve the records. Most of our records are on paper, but even electronic records, once archived, are not easy to retrieve.”*

#### 4.2. Other Impacts

A number of agencies noted technical difficulties in complying with electronic-records requests. Some reported that their systems were not flexible enough to customize reports in response to specific requests. Another problem cited by several agencies was incompatibility between systems and technologies. The survey reveals that a number of agencies still use paper-filing systems for some of their major records. Redaction, or removing nondisclosable personal information before releasing the rest of the database, also presents technical problems for some agencies.

##### Comments:

- *“The core database...was designed to contain all demographic information and employment history in support of the agency’s business process. No attempt was made to segregate data defined as confidential from data eligible for public disclosure. Therefore, requests ... typically required custom programming to select the requested data.”*
- *“Incompatible database formats. Pulling data from multiple databases. Some data only exists on paper. Output capability may not be readable by requester.”*
- *“Requests have been made for data that may be technically be ‘available’ in a database but*

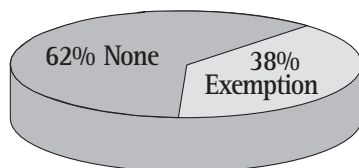
*is not sorted, indexed or classified in the way the requester would like. Current systems are not flexible enough to meeting changing business requirements of requester. Often data is stored on tape and can only be accessed with difficulty and additional cost."*

- *"We maintain business records for the operation of the agency which are not readily converted for the use [off] the public."*
- *"When the University of Washington receives a request for 'all the e-mail' files from all the existing backup tapes for a public requester, UW ... must stop the backup process or attempt to substitute manual procedures for making backups while pulling all of those files. Faculty research data, student educational material, staff memos, etc., are all mixed on the same disks and tapes."*

## 5. Cost Recovery/Fees for Access to Electronic Records

Under RCW 42.17.260(7), agencies are allowed to charge a fee to recover costs incurred in providing copies of public records. The costs that can be recovered include "the actual cost of the paper and the per page cost for use of agency copying equipment." Actual staff time used to copy and mail a record is recoverable, as are postage and shipping charges. However, agencies may not otherwise recover staff salaries, benefits, or administrative overhead.

Some agencies remarked that they wanted direction in terms of applying this law to an electronic-records environment.



Thirty-eight percent of the agencies surveyed have a specific exemption that allows them to recover copying costs on a basis other than the one

provided in RCW 42.17.260(7). A small number of these agencies realize significant revenues from fees for records requests, and report that staff costs for responding to those requests are 100 percent recovered. In most cases, however, cost-recovery provides marginal revenue and only partial recovery of actual staff costs, according to the agencies surveyed.

It is difficult to generalize about agency revenues generated through cost recovery in meeting requests for information. Agencies tend to fall into one of three ranges. Fish and Wildlife, Department of Corrections and others report revenues in the \$100-\$2,500 range each year. Labor and Industries and Ecology report revenues of \$15,000 and \$71,000 respectively, which define the second range. The highest range is defined at one end by the Department of Health, which collects \$260,000 for researchers and statistics and the Department of Licensing at the other, which generates \$11-million annually<sup>3</sup> based on specific statutory authority.

The copying fees set in statute may or may not be adequate for full cost recovery at 10 cents per page, but they do result in significant revenues. As a case in point, the Washington State Patrol generates \$500,000 each year through the copying of breathalyzer-test results for authorized requesters.

One agency summarized a problem relating specifically to commercial requests for electronic records:

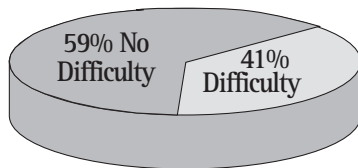
*"The Judicial Information System rule is founded on the premise that release of records should be made based on their sensitive or confidential nature rather than whether the requester is commercial or not. However, the commercial interests are attempting to make a profit from this information. To do this, they want to minimize their expenses. It appears that they want the agencies to do their work, such as compile information in a particular format."*

<sup>3</sup>The Department of Licensing reports revenues of \$23.2 million for the 1993-1995 Biennium and projected revenues of \$21.6-million in the current biennium.



### 5.1. Difficulties with Current Cost-Recovery Methods

One difficulty mentioned by agencies was developing an equitable system of charges for access to electronic data. Current statutes tend to prescribe cost recovery in terms of traditional paper copies. Agencies have no uniform approach to this difficulty. Some charge per record, some charge only for the diskette used to provide a copy of the data, and others do not charge for electronic access.



Forty-one percent of agencies surveyed reported difficulty in tracking actual costs, such as staff, computing time, etc., for all phases of processing a request.

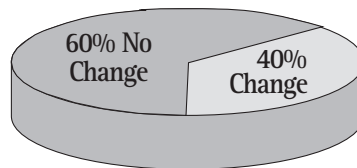
Another difficulty mentioned was the lack of a consistent cost-recovery policy for all state agencies to refer to.

#### Comments:

- “There is typically an adverse reaction from the requester when presented with a cost estimate for providing the information. The mentality seems to be that a 15-cent per page copy charge is sufficient..”
- “It is difficult even to determine what a “copy” is in today’s computer environment. The criteria are so loosely defined we could well err in how and what we charge.”
- “When processing requests for electronic data, UW ... must often program and format to accommodate the downloaded data into electronic or disk format that deletes data as allowed in statutory exemptions.”

### 5.2. Recommended Changes to Cost-Recovery Methods

Over 40 percent of the agencies recommended improvements to the methods used to determine the costs that can be recovered. Typically, agencies recommend that the “actual” cost of providing



ing the information be charged back to the requester. “Actual” costs were defined by several agencies to include staff salaries and benefits. Other agencies also suggested that system development and operating costs be recoverable.

Two agencies (the Department of Licensing and the Department of Retirement Systems) recommended that “market value” or a “ten percent markup” be the basis of fees for access to electronic records.

One agency recommended simply that data not be provided in electronic form.

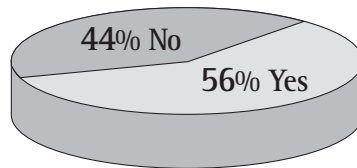
#### Comments:

- “[Agencies should] be able to charge full cost of creation...rather than just duplication costs.”
- “[State policy should] allow cost-recovery charge, based on actual charge, including staff time to run queries, run time charges to add processors, memory and storage in response to production requests.”
- “[Cost recovery] should be based on true costs. Data collection, data storage, salaries and benefits of staff, etc.

- *“Ad hoc queries take staff and system resources from operational support; we need standards for cost recovery and/or limits to standardized data sets.”*

## 6. Privacy and Confidentiality

Fifty-six percent of respondents said the state should place new limitations on the commercial use of personal information, to protect the privacy of individuals and firms. In some cases, changes



in security practices were recommended to protect confidential data from unauthorized release. Several agencies suggested changes to current law to protect a specific record or group of people (such as lottery winners) from disclosure of personal information.

Several agencies recommended the adoption of certain “fair information practices,” such as requiring citizens’ consent to secondary uses of personal information about them.

The survey reveals a wide range of policies and practices designed to protect the privacy of individuals and companies when public records are requested for commercial use. In part, this variety of policies appears to stem from a lack of clear law or policy to define what constitutes a “commercial purpose” and how or whether to distinguish between commercial and other requesters.

### 6.1. Informed Consent

Of the agencies that reported that they can legally release lists containing personally identifiable information for commercial purposes, most

(six of eight) do not inform citizens that the information collected can be disclosed and may be used for other purposes, including commercial purposes.

#### Comments:

- *“Generally, we believe that any release of information or databases containing personal information should follow accepted fair information practices and that information collected for one purpose should not be reused for another purpose without the direct consent of the persons involved.”*
- *“Much of the data in the vital records systems has been acquired by the state through a regulatory process. The public has not given permission, and an informed consent process has not been carried out for the wholesale release of the information.”*

### 6.2. Disclosure of Proprietary Information

Firms that disclose financial or proprietary information to state agencies wish to be assured that the information will not be released to competing firms. Two regulatory agencies remarked on a need for greater protections for sensitive information filed by firms.

#### Comments:

- *“[W]ith the gradual emergence of competition, telecommunications companies have become less willing to share sensitive business information with Commission staff due to concerns that, ultimately, we cannot protect it from release to their competitors.”*
- *“Regarding financial information such as wage scales, attendance, and expenses, it is common practice today that licensees do not exchange information with each other (their*



competitors), but routinely request the same information from the [state agency].”

### 6.3. Intellectual Property

State and local government agencies have engaged in partnerships with private-sector software firms to develop new automated systems. These partnerships provide a benefit to the agency – development costs are shared with the partner – and a benefit to the developer by allowing the firm to market the resulting system to other government agencies.

Two agencies, the state Department of Transportation and the University of Washington, raised concerns about the viability of such partnerships if the systems can be requested as public records by any commercial enterprise. The Department of Transportation is currently involved in litigation arising from such a request.

#### *Comment:*

- “Current exemptions do not provide adequate protection for intellectual property and should be broadened.”

### 6.4. Other Concerns

Although the survey did not ask specifically about data and access security, a number of agencies noted concerns with protecting electronic data from unauthorized access and the possible misuse of this data.

One agency, the Department of Health, was specifically concerned about potential fraudulent use of its vital records.

#### *Comments:*

- “We question...the current imbalance between the ease of access to data and privacy. There

is insufficient protection of the privacy of persons who report data to us.”

- “Currently, few security steps are in place to restrict access to confidential claim file data. If this data is accessed via Internet, confidentiality of claim file data could easily be breached.”
- “Electronic files of the legal portion [of birth records] are not currently protected by law, and such files have been released for authorized research purposes. If these files were to be released generally, they could be used for fraudulent purposes ....”

## 7. “Best Practice” Considerations

The survey asked agencies to identify “best practices” for the Work Group to consider.

Several agencies called for clearer policies and procedures to tell them what information can be disclosed, and what restrictions exist for the use of the information. One agency mentioned a need for clearer instructions and training for staff to follow in responding to requests.

Another priority for the agencies surveyed was to maintain citizens’ and firms’ privacy, to protect private and confidential data, and to be able to redact personally identifiable information from disclosable records. Some agencies also recommended the use of “informed consent” procedures, to make sure the public understands when information may be disclosed, and to whom.

An efficiency recommended by a few agencies would be to provide a limited number of standardized formats of electronic information, to reduce the staff time required to customize reports. Some agencies stressed that they would like to be able to fully recover staff and other costs involved in electronic-records requests. One agency noted

*“the need to weigh the government’s mission with the heightened demands for electronic data for profit-making activities without sufficient allocation of FTEs to support such activities.”*

At least one agency called for increased penalties for violations of laws governing the release and use of personal information. One agency recommended systems that would permit tracking of users, to ensure that use of records is in compliance with the law.

One agency raised the question, *“Should a commercial entity be able to purchase, for its own profit, data which has been collected by an agency on behalf [of] and at the expense of the taxpayer?”*

#### **Comments:**

- *“(1) The most important considerations for developing best practices are (a) the need for informed consent by the public for the release of personal information, (b) the need for increased penalties for violations of laws concerning the release and use of personal information, and (c) the need to weigh the government’s mission with the heightened demands for electronic data for profit-making activities without sufficient allocation of FTEs to support both activities....”*
- *“This information should be made available when (1) it is public information, (2) when not unreasonably burdensome to the agency, (3) or when requester is willing to bear cost of database development.”*

## **8. Conclusion: Administrative Best Practices**

The most prevalent best practices and principles identified by agencies — specifically the records-management professionals who deal with these requests every day — are:

- Provide notice to citizens that the information provided by them is subject to disclosure — and to whom;
- Agencies must be aware of their rights and responsibilities under the law;
- Incorporate accountability into records management to prevent misuse of records;
- Assess the full cost of responding to an electronic information request with a view to justifying its cost recovery more accurately;
- Balance the performance of an agency’s mission with the staff resources needed to respond to requests; and
- Offer uniform or “standard” data formats in order to reduce demand for customized electronic records.

In addition, the Department of Licensing (DOL) included in its response to the survey a copy of its *Data Access Principles*, reprinted here as Appendix B. The Work Group encourages agencies to develop a set of Administrative Best Practices that address the stewardship concerns related to commercial access within the context of specific data sets with which the agency deals. The Work Group further encourages agencies to use the principles identified here and in the DOL *Data Access Principles* in the development of agency-specific best practices.

# Agency Proposals for Amendments to Current Law

## Appendix A

<i>Agency</i>	<i>Recommended Amendment</i>
Department of Licensing	Minor changes needed to harmonize state law with the federal Drivers’ Privacy Protection Act of 1994, which takes effect in 1997.
Office of Marine Safety	Statutory coordination between RCW 42.17.310 and the Uniform Trade Secrets Act (Chapter 19.08 RCW). More specificity is needed to clearly define agency rights and obligations under 42.17 RCW with respect to RCW 9.73.060 [“Violating right of privacy - Civil action”] and RCW 42.17.255. Agency would like clarification similar to that provided for the Employment Security Department in Chapter 50.13 RCW.
Department of Retirement Systems	If RCW 42.17.310 (1) (a) is currently a permissive exemption, it should be mandatory.
Liquor Control Board	Protections in statute needed for certain financial, personal or criminal history and other records not currently exempted.
Health Care Authority	Specific exemption is needed for medical records, etc., used in research.
State Lottery Commission	Exemptions are needed for confidential proprietary information submitted in bids and vendor contracts.
Department of Social and Health Services	No specific exemptions mentioned, but “we question...the current imbalance between the ease of access to data and privacy. There is insufficient protection of the privacy of persons who report data to us.”
Utilities and Transportation Commission	An exemption for proprietary business information of regulated utilities may be needed in the future. Personally identifiable information from people who bring consumer complaints to the Commission should be exempt from disclosure.
State Parks and Recreation Commission	Appraisals, certain archaeological reports, employee personnel records and contract bids should be exempt.
Department of Health	Electronic files of releasable portions of birth records could be misused and should be protected. Complaints about the practice of a health care provider should not be subject to public disclosure until the report has been assessed and determined to warrant an investigation. Also, the law needs to be clarified regarding the release of addresses for health care providers.
University of Washington	Current exemptions do not provide adequate protection for intellectual property and should be broadened.
Employment Security Department	Chapter 50.13 RCW does not address clearly the need to permit bulk data (on-line) sharing to facilitate one-stop facilities and integrated government services.

## Appendix B

# DOL Data Access Principles: Basis for Responsible Information Stewardship

These principles were developed and adopted by the Washington State Department of Licensing in September 1996 as part of the agency's larger initiative to: a) develop a uniform agency-wide policy on the disclosure of automated data, and b) establish a clear business approach and technical strategy for sharing business data.

1. As keepers of the public trust, DOL will exercise responsible stewardship by maintaining the balance between public access to information and protecting personal privacy of individuals about whom DOL holds information.
2. DOL will respect public disclosure policy and comply with legal and appropriate access to customer information.
3. DOL will establish and publish standards and common processes for managing external requests for information.
4. DOL will require and enforce contracts to ensure that external entities which legally obtain information subsequently provide that information only to authorized persons.
5. DOL will not tolerate abuse of workplace access to information for unauthorized, inappropriate or illegal use.
6. DOL will conduct regular data access audits to assure that abuses are detected and stopped.
7. Personal information, when collected, should relate to, or be reasonably consistent with, the purpose of the collection and be necessary for the business operations authorized by statute.
8. DOL will inform its customers in writing that the information collected may be subject to disclosure if appropriate under the Public Disclosure Law.
9. DOL by nature of the information it maintains is a valued partner with government entities to promote policies for the public good and safety.
10. DOL will seek out effective techniques and technologies which will facilitate the public's legal access to agency-maintained information.
11. DOL will examine ways to determine the costs to support increasing demands for access to information by external entities and may consider appropriate financial relationships with private entities.
12. However, individuals have the right to be forgotten: Personal information about DOL customers shall be kept only as long as required for the legitimate purpose of the data collector and thereafter destroyed or archived according to the Public Records Retention Schedule.
13. DOL will not engage in active marketing to stimulate the demand for the information it keeps on private individuals.

For more information concerning these Data Access Principles, contact the Department of Licensing Public Affairs Office, P.O. Box 9020, Olympia, WA 98507-9020. Telephone 360/902-3608.